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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Jennifer Burton,

Plaintiff,

v.

Reliance Standard Life Insurance  
Company,

Defendant.

Case No.

**COMPLAINT**

For her claims against Defendant Reliance Standard Life Insurance Company, (“RSLIC” or “Defendant”), Plaintiff Jennifer Burton (“Ms. Burton” or “Plaintiff”) alleges as follows:

**PARTIES, VENUE, AND JURISDICTION**

1. This action arises under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* (“ERISA”).

2. As an employee of Arthur J. Gallagher & Co. (“Arthur Gallagher”), Ms. Burton was a participant of the Arthur J. Gallagher & Co. Group Insurance Plan (the “Plan”).

3. Arthur Gallagher is an Illinois company headquartered in Itasca, Illinois.

4. The Plan is a purported ERISA benefit plan established and maintained by Arthur Gallagher for the benefit of its employees.

5. RSLIC is a third-party claims administrator for the Plan for short-

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1 term disability (“STD”) and long-term disability (“LTD”) benefits.

2 6. RSLIC fully insures Arthur Gallagher employees for long-term  
3 disability (“LTD”) benefits pursuant to Policy Number 118606 (“the Policy”).  
4 (Attach Policy at Exhibit A.)

5 7. RSLIC is a Plan fiduciary as defined by ERISA.

6 8. At the time Ms. Burton sought LTD benefits under the Plan, RSLIC  
7 administered claims for Arthur Gallagher under the Plan, acted on behalf of the  
8 Plan, and acted as an agent of Arthur Gallagher and/or the Plan.

9 9. RSLIC makes final decisions regarding the payment of disability  
10 benefits for the Plan and to administer the Plan.

11 10. RSLIC has a duty to administer the Plan prudently and in the best  
12 interests of all Plan participants and beneficiaries.

13 11. Ms. Burton currently resides in Maricopa County, Arizona and has  
14 been a resident of Maricopa County at all times since becoming a Plan  
15 participant.

16 12. RSLIC has its principal place of business in the state of Philadelphia.

17 13. RSLIC is licensed and authorized to do business in Maricopa  
18 County, Arizona.

19 14. RSLIC resides and is found in Maricopa County within the meaning  
20 of the jurisdiction and venue provisions of ERISA, 29 U.S.C. § 1132, and 28  
21 U.S.C. § 1391.

22 15. This Court has jurisdiction over the subject matter of this action  
23 under ERISA, 29 U.S.C. §§ 1132(a), 1132(e)(1), and 28 U.S.C. §§ 2201-02  
24 (declaratory judgments).

25 16. Venue is proper in this Court under ERISA, 29 U.S.C. § 1132(e)(1)  
26 and 28 U.S.C. § 1391(b).

## GENERAL ALLEGATIONS

### *Ms. Burton's Disability*

17. Ms. Burton was diagnosed with multiple sclerosis ("MS") in 1992.

18. Ms. Burton was able to work with MS for decades.

19. From June 27, 2019 to July 2, 2019, Ms. Burton was hospitalized due to life-threatening meningitis.

20. She suffered serious residual effects from meningitis and continues to suffer from meningitis complications.

21. Meningitis can cause permanent disabling symptoms.

22. After developing meningitis, she was diagnosed with periodic limb movements of sleep ("PLMS"), peripheral neuropathy, and lumbar spine degenerative disc disease ("DDD").

23. Ms. Burton's meningitis, PLMS, peripheral neuropathy, and DDD are unrelated to MS.

24. MS does not contribute to Ms. Burton's inability to work and has not progressed.

25. A magnetic resonance imaging ("MRI") scan of the brain performed on June 29, 2019, while Ms. Burton was hospitalized due to meningitis, revealed "[n]o [magnetic resonance] evidence of active [MS] infection or active demyelination."

26. A subsequent MRI of the brain performed on March 8, 2021 also revealed "[n]o new or enhancing lesion to suggest active [MS] disease."

27. At no time since she became Totally Disabled has Ms. Burton had active MS.

28. Ms. Burton's non-MS medical conditions are disabling and prevent her from performing her Regular Occupation or Any Occupation under the Policy.

29. Ms. Burton is under the regular care of several physicians.



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40. Under the Policy, the “Monthly Benefit is an amount equal to 60% of Covered Monthly Earnings.”

41. The Policy includes a limitation for “Pre-Existing Conditions.”

42. The Policy states the limitation for “Pre-Existing Conditions” are that “[b]enefits will not be paid for a Total Disability: (1) caused by; or (2) resulting from; a Pre-Existing Condition unless the Insured has been Actively at Work for one (1) full day following the end of twelve (12) consecutive months from the date he/she became an Insured.”

43. The Policy defines “Actively at Work” as “actually performing on a Full-time basis the material duties pertaining to his/her job in the place where and the manner in which the job is normally performed.”

44. Ms. Burton has, at all times since the date her Disability began, been eligible for LTD benefits due to her inability to perform the duties of her Regular Occupation or Any Occupation.

#### *Ms. Burton's Employment*

45. Ms. Burton began working for Arthur Gallagher on June 29, 2018.

46. Arthur Gallagher employed Ms. Burton as a Senior Claims Adjuster.

47. Ms. Burton had been a claims adjuster for over two decades prior to joining Arthur Gallagher.

48. On June 27, 2019, Ms. Burton was hospitalized with meningitis.

49. Ms. Burton last worked on June 25, 2019 due to her disability.

#### *RSLIC's Claim Handling*

50. Ms. Burton applied for STD benefits.

51. RSLIC approved Ms. Burton's STD benefits for the maximum benefit period until December 30, 2019.

52. On November 22, 2019, RSLIC opened an LTD claim and began investigating Ms. Burton's LTD eligibility.

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1           53. RSLIC's November 22, 2019 internal note stated that Ms. Burton "is  
2 eligible however subject to pre [e]x[isting] investigation."

3           54. On December 3, 2021, Ms. Burton returned a completed Pre-  
4 Existing Condition Questionnaire form to RSLIC.

5           55. On December 4, 2019, RSLIC telephonically interviewed Ms.  
6 Burton. RSLIC's internal notes for the interview stated Ms. Burton had  
7 contracted meningitis and that "she was using a cane," her "cognitive  
8 perception" had been affected," and she now "gets tired easily." RSLIC's  
9 internal notes for the interview also stated that Ms. Burton "did not [have] new  
10 [MS] lesions."

11           56. On December 30, 2019, RSLIC referred Ms. Burton's case for a pre-  
12 existing medical review.

13           57. On January 10, 2020, RSLIC's nurse consultant, Moneco Foulker  
14 RN, completed the pre-existing medical review.

15           58. Ms. Foulker stated that "[r]ecords indicated [Ms. Burton's]  
16 meningitis and MS exacerbation resolved by 09/13/19 with [Ms. Burton]  
17 capable of returning to full time work capacity."

18           59. Ms. Foulker also stated that Ms. Burton's treating provider "Dr.  
19 [Aimee] Borazanci restricted [Ms. Burton] to a 20% reduction in case load,  
20 restriction is not supported by objective clinical documentation of a severity at a  
21 quality of impaired cognitive function," adding that "[r]estriction appears to be  
22 job related."

23           60. Ms. Foulker noted that Ms. Burton had been referred by Dr.  
24 Borazanci for neuropsychological testing.

25           61. Ms. Foulker stated that "[m]eningitis is not [a] preexisting  
26 [condition]."

27           62. Despite acknowledging evidence of ongoing positive clinical  
28 findings in examinations and complaints of ongoing symptoms, Ms. Foulker

1 determined that Ms. Burton's meningitis residuals had "resolved by 09/13/19  
2 with [Ms. Burton] capable of returning to full time work capacity."

3 63. Ms. Foulker incorrectly stated that Dr. Borazanci restricted Ms.  
4 Burton to a 20% reduction in case load. Dr. Borazanci's assistant, Charrid  
5 Simpson FNP opined the restriction.

6 64. Ms. Foulker did not examine or speak with Ms. Burton.

7 65. Ms. Foulker did not speak with Ms. Burton's treating medical  
8 providers.

9 66. Ms. Foulker is unqualified to opine on Ms. Burton's conditions.

10 67. RSLIC did not attempt to obtain Ms. Burton's neuropsychological  
11 testing results.

12 68. In a letter dated January 15, 2020, RSLIC denied Ms. Burton's LTD  
13 benefits (the "Denial").

14 69. RSLIC based the Denial solely on Ms. Foulker's medical review.

15 70. RSLIC's Denial was based on a cursory and deficient review.

16 71. On January 27, 2020, Arthur Gallagher's Senior Benefits Specialist  
17 and Leave Administrator, Karen J. Cole, contacted Michelle Mathias at RSLIC by  
18 email upon learning the details of RSLIC's Denial and asked whether the  
19 determination "was a typo?"

20 72. Ms. Cole went on to inquire "[h]ow can you say [Ms. Burton]  
21 wasn't eligible for disability beyond 9/13/19 when [RSLIC] approved her for  
22 STD benefit through 12/30/19" and requested that Ms. Mathias "[p]lease  
23 explain this statement."

24 73. On January 27, 2020, Ms. Mathias emailed Ms. Cole and stated that  
25 "the STD review determined [Ms. Burton] is supported to 12/30/19 "and that  
26 "[Ms. Burton's] condition is not pre-existing [...] [h]owever; she is not meeting  
27 the definition of total disability beyond the LTD elimination period."  
28



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1           74. On February 12, 2020, Ms. Burton's counsel submitted a letter to  
2 RSLIC requesting relevant documents under ERISA.

3           75. RSLIC disclosures were deficient and most notably lacking RSLIC's  
4 medical reviews and the entire STD claim file.

5           76. On April 21, 2020, Ms. Burton's counsel submitted a letter to RSLIC  
6 informing them that they had not received any further disclosures and  
7 submitted another request for relevant documents including 1) RSLIC's medical  
8 reviews, 2) the entire STD claim file, and 3) RSLIC's LTD internal notes.

9           77. Ms. Burton's counsel received a supplemental disclosure from  
10 RSLIC that remained deficient and most notably lacking the STD claim file.

11           78. RSLIC did not provide the Policy until June 12, 2020, despite the  
12 Policy clearly being a "relevant document" as defined by ERISA.

13           79. On June 12, 2020, RSLIC refused to provide the STD claim file,  
14 directing Ms. Burton to ask the STD claims examiner directly. Ms. Burton did as  
15 directed and still has never received the STD claim file.

16           80. Plaintiff is informed and believes RSLIC had access to the STD  
17 claim file and could have provided.

18           81. Undoubtedly, the STD claim file contains "relevant documents" as  
19 defined by ERISA.

20           82. As part of its legal representation, Ms. Burton's counsel instructed  
21 RSLIC that RSLIC and its third-party associates may not contact Ms. Burton or  
22 her treating providers without arranging such contact through Ms. Burton's  
23 counsel.

24           83. On November 10, 2020, Ms. Burton appealed through counsel (the  
25 "Appeal").

26           84. As part of the Appeal, Ms. Burton submitted objective evidence  
27 supporting her ongoing disability under the Policy, including an independent  
28 functional capacity evaluation ("FCE"), an independent vocational evaluation



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1 with addendum, a fully favorable Social Security determination, and updated  
2 treatment records.

3 85. The vocational examiner noted that while Ms. Burton was  
4 diagnosed with multiple sclerosis since 1992, she had an excellent work history  
5 in the Insurance Industry primarily as a Claims Examiner/Claims Adjuster for  
6 Workers' Compensation. He concluded she would not be able to perform her  
7 past relevant work as a Claims Adjuster or any other sedentary work.

8 86. On April 19, 2020, the Social Security Administration ("SSA")  
9 determined that Ms. Burton became disabled on June 26, 2019.

10 87. Updated medical evidence submitted with Ms. Burton's Appeal  
11 revealed new medical conditions.

12 88. Ms. Burton was diagnosed with lumbar spine DDD in January 2020.

13 89. Ms. Burton was diagnosed with periodic limb movements of sleep  
14 ("PLMS"), also referred to as periodic limb movement disorder ("PLMD"), in  
15 April 2020.

16 90. Ms. Burton was diagnosed with idiopathic progressive neuropathy  
17 in June 2020.

### 18 *RSLIC's Gratuitous Appeal Review*

19 91. RSLIC failed to fully investigate the claim before issuing the Denial.

20 92. RSLIC failed to timely investigate the Appeal, waiting until the final  
21 hour to begin its review.

22 93. On December 4, 2020, RSLIC issued a letter stating an intent to  
23 obtain an "independent" physician review, thereby claiming an additional 45  
24 days to make a final determination on Ms. Burton's appeal.

25 94. RSLIC failed to identify the special circumstances justifying the 45-  
26 day extension as mandated by ERISA.

27 95. RSLIC provided no "special circumstances" justifying the  
28 additional 45 days for its review.

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1           96. On December 23, 2021, RSLIC sent Ms. Burton a December 21, 2020  
2 neurological advisory report by David Hoenig, M.D.

3           97. Dr. Hoenig's "advisory report" singularly addressed MS.

4           98. Dr. Hoenig's "advisory report" failed to address Ms. Burton's other  
5 disabling medical conditions, including her meningitis and related issues.

6           99. Dr. Hoenig, despite having never reviewed or addressed Ms.  
7 Burton as a whole person or considered all of her medical conditions, opined  
8 that Ms. Burton had full-time work capacity.

9           100. Dr. Hoenig stated "[t]here is no documentation of a  
10 neuropsychological evaluation submitted for review demonstrating objective  
11 cognitive pathology."

12           101. But Dr. Hoenig acknowledged in his report that RSLIC forwarded  
13 him the October 17, 2019 neuropsychological consultation and  
14 neuropsychological testing ("NPT") that revealed cognitive impairment in  
15 multiple areas.

16           102. Dr. Hoenig entirely failed to address the FCE in his "advisory  
17 report."

18           103. On January 15, 2021, Ms. Burton's counsel responded to Dr.  
19 Hoenig's advisory report (the "First Response").

20           104. On February 5, 2021, Dr. Hoenig issued an addendum advisory  
21 report to the First Response.

22           105. Dr. Hoenig "acknowledged that [Ms. Burton] has cognitive  
23 difficulty."

24           106. Dr. Hoenig stated that "[t]here was documentation of a sleep  
25 study demonstrating abnormalities" and that "[t]his may be a factor in  
26 impairment."

27           107. Dr. Hoenig "acknowledged that the claimant had a Functional  
28 Capacity Evaluation in which the claimant does not demonstrate the functional

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1 capabilities required to perform her past work or any other type of sedentary  
2 demand work on a regular and consistent basis.” Dr. Hoenig also “recognized  
3 that the [Ms. Burton] ha[d] neurological deficits on exam[ination].”

4 108. Dr. Hoenig stated that “[b]ased on the documentation provided,  
5 from a neurological perspective, there was medical data to substantiate the  
6 presence of some of the claimant’s subjective complaints as of June 25, 2019.”

7 109. RSLIC failed to send Dr. Hoenig’s Addendum report to Ms. Burton  
8 for response.

9 110. RSLIC’s internal note on February 10, 2021 stated that Dr. Hoenig’s  
10 “2/5/21 addedum [*sic.*] indicates no change in his neuro assessment but defers  
11 to Neuropsych and sleep medicine for assessment of other supported  
12 impairments.”

13 111. RSLIC requested neuropsychological and sleep medicine peer  
14 reviews.

15 112. On February 22, 2021, RSLIC emailed Ms. Burton’s counsel a  
16 February 17, 2021 neuropsychology Advisory Report by David Nowell, Ph.D.  
17 and a February 18, 2021 sleep medicine Advisory Report by Allen Blaivas, D.O.

18 113. In Dr. Nowell’s February 17, 2021 neuropsychology Advisory  
19 Report, the only limitation he considered is that Ms. Burton’s October 17, 2019  
20 neuropsychological evaluation “offers an impression of impaired processing  
21 speed.” But the October 17, 2019 NPT revealed Ms. Burton has impairments in  
22 processing speed, motor speed, dexterity, and encoding of structured verbal  
23 information.

24 114. Dr. Nowell conceded that Ms. Burton’s cognitive inefficiency  
25 described in the October 17, 2019 NPT could also be likely attributed to Ms.  
26 Burton’s meningitis.

27 115. Dr. Nowell did not address the FCE when analyzing Ms. Burton’s  
28 impairments.

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1           116. Dr. Nowell improperly attempted to contact Ms. Burton's  
2 neuropsychological examiner without arranging contact first with Ms. Burton's  
3 legal counsel.

4           117. In the February 18, 2021 sleep medicine Advisory Report, Dr.  
5 Blaivas acknowledged that Ms. Burton has sleep-related diagnoses from June 25,  
6 2019 that included restless legs syndrome/periodic limb movement disorder  
7 and fatigue.

8           118. Dr. Blaivas acknowledged that Ms. Burton's April 5, 2020  
9 polysomnography confirmed she has periodic movements in sleep syndrome.

10           119. Dr. Blaivas repeatedly described Ms. Burton's PLMD as moderate  
11 in severity.

12           120. Dr. Blaivas failed to address the FCE when analyzing Ms. Burton's  
13 impairments.

14           121. RSLIC knows that FCEs are gold standards for determining a  
15 claimant's functionality, and yet, it and its peer reviewers consistently and  
16 willfully ignored the FCE.

17           122. Dr. Blaivas repeatedly stated in his report's conclusions that Ms.  
18 Burton's fatigue and insomnia were caused by her underlying MS despite  
19 having no medical basis to make that assertion.

20           123. The only basis Dr. Blaivas provided for his conclusion is a quote  
21 from an article published by academics in the European Journal of Neurology in  
22 2012 titled: "Multiple Sclerosis and restless legs syndrome; a systematic review  
23 and meta-analysis." But Dr. Blaivas misquoted the study, which actually  
24 supports Ms. Burton's claim.

25           124. Dr. Blaivas concluded that Ms. Burton is not impaired due to sleep-  
26 related issues and does not have any restrictions or limitations.

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1           125. Dr. Blaivas improperly contacted Ms. Burton's former sleep  
2 medicine medical provider without arranging contact first with Ms. Burton's  
3 counsel.

4           126. On March 22, 2021, Ms. Bruton's counsel sent a response to Drs.  
5 Nowell's and Blaivas' Advisory Reports to RSLIC (the "Second Response").

6           127. Enclosed with the Second Response were updated medical records  
7 that included an updated November 10, 2020 neuropsychological consultation  
8 report.

9           128. On March 31, 2021, RSLIC sent Ms. Burton's counsel an email  
10 containing a March 30, 2021 neuropsychology Advisory Report addendum by  
11 Dr. Nowell. RSLIC requested a response by April 7, 2021.

12           129. In the March 30, 2021 neuropsychology Advisory Report  
13 addendum, Dr. Nowell failed to review the November 9, 2020  
14 neuropsychological evaluation.

15           130. Dr. Nowell stated that Ms. Burton's February 22, 2021 neurological  
16 medical record "notes no behavioral health complaints."

17           131. In reality, Ms. Burton's February 22, 2021 neurological progress  
18 noted that Ms. Burton reported she suffered from worsening cognitive issues.

19           132. On April 7, 2021, Ms. Burton's counsel sent a response to Dr.  
20 Nowell's Advisory Report addendum to RSLIC (the "Third Response").

21           133. In the Third Response, Ms. Burton's counsel notified RSLIC of its  
22 failure to confer in good faith over an extension request and disputed the  
23 unreasonable timeline it provided for Ms. Burton to respond.

24           134. On April 8, 2021, RSLIC sent Ms. Burton's counsel an email  
25 containing yet another March 31, 2021 sleep medicine Advisory Report  
26 addendum by Dr. Blaivas. RSLIC requested an response by April 15, 2021.

27           135. On April 20, 2021, Ms. Burton's counsel sent a response to Dr.  
28 Blaivas' Advisory Report addendum to RSLIC (the "Fourth Response").

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1           136. Enclosed with the Fourth Response were updated medical records  
2 that included an updated March 2021 MRI imaging reports of the brain and  
3 spine. Also included was argument, pointing out glaring inaccuracies in the  
4 addendum report.

5           137. On May 6, 2021, RSLIC sent Ms. Burton's counsel an email  
6 containing yet another April 30, 2021 neuropsychology Advisory Report second  
7 addendum by Dr. Nowell and a May 5, 2021 sleep medicine Advisory Report  
8 second addendum by Dr. Blaivas.

9           138. In the April 30, 2021 neuropsychology Advisory Report second  
10 addendum, Dr. Nowell stated that the updated March 2021 MRI imaging  
11 reports were "interpreted as revealing hyper intense supratentorial lesions  
12 consistent with multiple sclerosis." But importantly, the updated March 2021  
13 MRI imaging reports concluded that Ms. Burton has "[n]o new or enhancing  
14 lesion to suggest active [MS] disease." Dr. Nowell ignored this critical finding.

15           139. On May 12, 2021, Ms. Burton's counsel sent a response to Dr.  
16 Nowell's Advisory Report second addendum and Dr. Blaivas' Advisory Report  
17 second addendum to RSLIC (the "Fifth Response").

18           140. In the Fifth Response, Ms. Burton's counsel noted that it had been  
19 one hundred eighty-three (183) days since Ms. Burton had submitted her  
20 Appeal.

21           141. In the Fifth Response, Ms. Burton's counsel noted that RSLIC had  
22 conducted no less than seven (7) medical advisory reports and addendums.

23           142. In the Fifth Response, Ms. Burton also pointed out several issues  
24 with the second addendum reports.

25           143. On May 12, 2021, RSLIC's Cynthia Pietrowski emailed Ms. Burton's  
26 counsel in response to the Fifth Response, stating that she "asked for Drs.  
27 Blaivas and Nowell to address [Ms. Burton's counsel's] concerns and provide a  
28 supplemental report."

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1 144. In a May 12, 2021 email response, Ms. Burton's counsel stated that  
2 RSLIC are "inexcusably delaying a determination being made on this claim."

3 145. Ms. Burton's counsel requested that RSLIC make a determination  
4 on Ms. Burton's claim immediately.

5 146. Ms. Burton's counsel requested that Ms. Pietrowski please provide  
6 the name and contact information for her manager.

7 147. In a May 12, 2021 email response, Ms. Pietrowski stated that if Ms.  
8 Burton's counsel did not wish for her concerns to be addressed by the  
9 independent specialist then Ms. Pietrowski would continue with the review  
10 based on the current information. Ms. Pietrowski did not provide the name and  
11 contact information for her manager as requested.

12 148. In a May 13, 2021 email response, Ms. Burton's counsel asked Ms.  
13 Pietrowski to please continue her review based on the current information.

14 149. Ms. Burton's counsel also asked Ms. Pietrowski to consider the  
15 concerns raised in the rebuttals and disregard the Advisory Reports "due to  
16 their many errors in light of the medical evidence."

17 150. In a letter dated May 18, 2021, RSLIC upheld its denial of Ms.  
18 Burton's benefits (the "Final Denial").

19 151. RSLIC issued the Final Denial one hundred eighty-nine (189) days  
20 after Ms. Burton's counsel submitted the Appeal.

21 152. RSLIC relied on Drs. Hoenig's, Nowell's, and Blaivas' opinions in  
22 the Final Denial.

23 153. The Final Denial does not mention Dr. Hoenig's February 5, 2021  
24 addendum Advisory Report.

25 154. RSLIC unreasonably ignored the FCE report supporting Ms.  
26 Burton's physical disabling conditions.



1 155. RSLIC denied the claim despite a fully favorable Social Security  
2 determination and never bothered to investigate the Social Security  
3 determination.

4 156. RSLIC only relied on evidence that served the purpose of denying  
5 Plaintiff's claim.

6 157. RSLIC relied exclusively on evidence gathered on Appeal, which is  
7 an abuse of discretion and breach of fiduciary duty.

8 *RSLIC's Ongoing Failure to Provide Disclosures*

9 158. On May 19, 2021, Ms. Burton requested a copy of Ms. Burton's  
10 updated relevant documents under ERISA since RSLIC's last disclosure had  
11 been on June 12, 2020.

12 159. On June 24, 2021, having received no disclosures from RSLIC, Ms.  
13 Burton's counsel submitted a second letter to RSLIC requesting the updated  
14 relevant documents under ERISA.

15 160. On July 21, 2021, having received no disclosures from RSLIC, Ms.  
16 Burton's counsel submitted a third letter to RSLIC requesting the updated  
17 relevant documents under ERISA.

18 161. Ms. Burton's counsel received a July 28, 2021 disclosure from  
19 RSLIC.

20 162. On August 13, 2021, Ms. Burton's counsel submitted a letter to  
21 RSLIC informing them that the July 28, 2021 disclosure was deficient and most  
22 notably lacked RSLIC's internal notes, part of the supplemental evidence  
23 submitted with Ms. Burton's Appeal, and part of the email correspondence sent  
24 by RSLIC to Ms. Burton's counsel.

25 163. Ms. Burton's counsel received a September 2, 2021 supplemental  
26 disclosure from RSLIC.

27 164. RSLIC caused delay in the appeals process at every turn and  
28 violated in a multitude of ways.

1 165. Ms. Burton exhausted her administrative remedies and timely filed  
2 this lawsuit.

3 **COUNT I**  
4 **(Recovery of LTD Plan Benefits)**

5 166. All other paragraphs and headings are incorporated by reference.

6 167. The Plan is an Employee Welfare Benefit Plan as defined in ERISA,  
7 29 U.S.C. § 1002.

8 168. The Plan represents LTD coverage and a promise to provide LTD  
9 benefits until Ms. Burton is no longer Disabled under the terms of the Plan.

10 169. Ms. Burton continues to be Disabled from her Regular Occupation  
11 and Any Occupation.

12 170. Ms. Burton has claimed the benefits under the Plan and Policy to  
13 which she is entitled.

14 171. Ms. Burton reasonably expected that her medical conditions met the  
15 requirements of Disability as defined by the Policy and that she would receive  
16 benefits under the Policy until she reaches age 67 or until she was no longer  
17 disabled.

18 172. Despite the coverage of Ms. Burton's Disability, RSLIC improperly  
19 denied her LTD benefits in breach of the Plan and ERISA.

20 173. RSLIC's and the Plan's collective conduct was arbitrary, capricious,  
21 an abuse of discretion, not supported by substantial evidence, and clearly  
22 erroneous.

23 174. Ms. Burton is entitled to *de novo* review.

24 175. RSLIC is operating under a structural conflict of interest as both  
25 payer and decision maker on claims.

26 176. RSLIC's conflict of interest directly influenced its selections of  
27 medical reviewers.  
28

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1 177. Instead of evaluating a participant's eligibility based on the  
2 applicable Policy language and medical evidence, RSLIC makes claims decisions  
3 based on the claims resources and financial risk it faces on certain claims.

4 178. RSLIC did not properly consider the available evidence when  
5 denying Ms. Burton's claim.

6 179. RSLIC failed to conduct a full and fair review.

7 180. RSLIC misstated medical evidence for its own financial benefit, *e.g.*,  
8 it excessively relied on biased and untimely medical reviews.

9 181. The medical consultants ignored critical medical evidence.

10 182. The medical consultants mischaracterized critical medical evidence.

11 183. RSLIC relied on findings that constitute "clearly erroneous findings  
12 of fact" to deny Ms. Burton's benefits.

13 184. RSLIC is aware the Plan "requires satisfactory proof of disability,  
14 not etiology." *See Lesser v. Reliance Standard Life Ins. Co.*, 385 F. Supp. 3d 1356,  
15 1374 (N.D. Ga. 2019).

16 185. RSLIC's focus on MS to the exclusion of Ms. Burton's disabling  
17 conditions that would qualify her for benefits is an abuse of discretion and a  
18 violation of the Plan.

19 186. RSLIC based its decision on unreliable and inaccurate information.  
20 When confronted with this knowledge, RSLIC chose to ignore the inaccuracies  
21 or created new reasons for denial.

22 187. Upon information and belief, RSLIC provided its reviewers and  
23 vendors with internal notes and financial information about the claim,  
24 compromising their ability to make "independent" medical determinations and  
25 creating further bias in reviews.

26 188. RSLIC routinely emphasizes information that favors a denial of  
27 benefits while deemphasizing other information that suggests a contrary  
28 conclusion.

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189. RSLIC failed to properly consider the opinions of Ms. Burton's treating and examining physicians and other specialists.

190. In denying Ms. Burton's LTD benefits, RSLIC completely disregarded evidence of Ms. Burton's meningitis and other medical conditions.

191. RSLIC used biased reviewers in evaluating Ms. Burton's claim, because it knew that the reviewers' recommendations would be unfavorable for approving Ms. Burton's benefits.

192. The peer reviewers arbitrarily reached their opinions based on insufficient investigation.

193. RSLIC failure to produce the STD claim file and other "relevant documents" which prejudiced Ms. Burton's ability to appeal.

194. Plaintiff is informed and believes RSLIC destroys incriminating documents and punishes employees who rely excessively on email or who place information in writing that could be discoverable and harmful to RSLIC.

195. RSLIC did not properly address the September 2020 FCE submitted with the Appeal.

196. RSLIC has routinely secured FCEs in cases and had no good faith basis for ignoring the FCE.

197. RSLIC failed to adequately explain why it disregarded the findings of the Social Security Administration ("SSA").

198. RSLIC engaged in other procedural irregularities, which it did to serve its own financial best interests.

199. Under ERISA, RSLIC is obligated to "maintain reasonable procedures governing the ... appeal of adverse benefit determinations [and] ... will be deemed to be reasonable only if - (3) the claims procedures ... are not administered in a way that unduly inhibits or hampers the ... processing of claims for benefits." 29 CFR § 2560.503-1(b)(3).

1           200. RSLIC failed to maintain reasonable claims procedures and  
2 hampered the processing of Ms. Burton's claim for benefits and Appeal.

3           201. RSLIC violated ERISA when it delayed the Appeal review for 45  
4 days without special circumstances.

5           202. RSLIC has a pattern and practice of improperly tolling decisions  
6 and abusing the appeals process to procure evidence supporting denials. *See,*  
7 *e.g., McIntyre v. Reliance Standard Life Ins. Co.*, 2019 WL 2267054 (D. Minn. 2019)  
8 (taking 204 days to make a determination and relying on untimely evidence  
9 secured on appeal was an abuse of discretion). Here, it took 189 days to make an  
10 appeals decision.

11           203. RSLIC's delay – in violation of ERISA – allowed it to secure the sole  
12 evidence it relied upon to issue the Final Denial. *See McIntyre v. Reliance Standard*  
13 *Life Ins. Co.*, No. 17-5134 (JRT/DTS), 2021 WL 3711034, at \*8 (D. Minn. Aug. 20,  
14 2021) ("Reliance's delay in processing McIntyre's appeal and its use of that delay  
15 to procure the only piece of medical evidence that supported its adverse  
16 determination therefore contribute to the Court's determination that Reliance's  
17 denial was unreasonable.").

18           204. The courts have collectively compiled "well-documented  
19 irregularities and judicial critiques of Reliance's claims review process. *See,*  
20 *e.g., Okuno v. Reliance Standard Life Ins. Co.*, 836 F.3d 600, 611–12 (6th Cir.  
21 2016); *George v. Reliance Standard Life Ins. Co.*, 776 F.3d 349, 354–55 (5th Cir.  
22 2015); *Hoff v. Reliance Standard Life Ins. Co.*, 160 Fed. Appx. 652, 654 (9th Cir.  
23 2005); *Nichols v. Reliance Standard Life Ins. Co.*, No. 17-42, 2018 WL 3213618 at \*6–7  
24 (S.D. Miss. June 29, 2018), *rev'd*, 924 F.3d 802 (5th Cir. 2019) (collecting cases). It  
25 suffices to say that Reliance has a documented history of arbitrary claims  
26 denials." *McIntyre v. Reliance Standard Life Ins. Co.*, No. 17-5134 (JRT/DTS), 2021  
27 WL 3711034, at \*10 (D. Minn. Aug. 20, 2021).

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1           205. RSLIC violated ERISA when it denied the claim without a  
2 reasonable investigation.

3           206. RSLIC exploited ERISA's regulatory framework to delay its benefit  
4 determination on review by securing excessive peer review and addendum  
5 reports.

6           207. RSLIC failed to comply with ERISA's regulatory framework and  
7 failed to expeditiously resolve the claim.

8           208. RSLIC has a history of delaying claims decisions and has been  
9 criticized in cases for its conduct, including in *Fessenden v. Reliance Std. Life Ins.*  
10 *Co.*, 927 F.3d 998, 999-1000 (7th Cir. 2019).

11           209. Plaintiff is informed and believes RSLIC causes delay intentionally  
12 to avoid setting aside reserves for claims and also in the hopes that claimants  
13 will get discouraged and abandon the claims process altogether.

14           210. RSLIC's delay caused significant harm to Ms. Burton and was in  
15 violation of ERISA.

16           211. RSLIC has a pattern and practice of protracted claims decisions and  
17 exploits ERISA's regulations to avoid financial liability for as long as possible.

18           212. RSLIC engaged in claim discussions to decide the directions of  
19 appeals without having reviewed the complete medical evidence,  
20 demonstrating its predetermined path of terminating benefits.

21           213. RSLIC intentionally gathered evidence to stack the deck in its favor  
22 and against Ms. Burton, such as the peer review reports from Drs. Hoenig,  
23 Nowell, and Blaivas.

24           214. RSLIC has a parsimonious claims handling history.

25           215. RSLIC failed to conduct a "meaningful dialogue" regarding Ms.  
26 Burton's claim.

27           216. RSLIC's conduct constitutes a breach of its fiduciary duties to Ms.  
28 Burton.

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1           217. Under the de novo standard of review, to be entitled to benefits Ms.  
2 Burton need only prove by a preponderance of the evidence that she is disabled.

3           218. Even under the abuse of discretion standard of review, RSLIC  
4 abused its discretion, because its decision denying Ms. Burton's disability  
5 benefits was arbitrary and capricious and caused or influenced by a financial  
6 conflicts of interest for RSLIC, its reviewing physicians, and its vendors. These  
7 conflicts of interest precluded the full and fair review required by ERISA, 29  
8 U.S.C. 1133(2) and 29 C.F.R. § 2560.503-1(g)(1) and (h)(2).

9           219. Ms. Burton is entitled to discovery regarding the effects of the  
10 procedural irregularities and structural conflict of interest that infiltrated the  
11 claims handling process and discovery regarding the effects of RSLIC's,  
12 reviewing physicians', its employees', and its vendors' financial conflicts of  
13 interest, biases, and motivations on the decision terminating Ms. Burton's LTD  
14 claim.

15           220. Under the de novo standard of review, Ms. Burton is entitled to  
16 discovery regarding, among other things, the credibility of RSLIC's medical  
17 reviews and RSLIC's lack of partiality due to its financial conflicts of interest.  
18 *Opeta v. Nw. Airlines Pension Plan for Contract Employees*, 484 F.3d 1211, 1217 (9th  
19 Cir. 2007) (under the de novo standard of review, new evidence may be  
20 admitted regarding, among other things: "the credibility of medical experts...  
21 [and] instances where the payor and the administrator are the same entity and  
22 the court is concerned about impartiality" (quoting *Quesinberry v. Life Ins. Co. of*  
23 *N. Am.*, 987 F.2d 1017, 1026-27 (4th Cir. 1993)).

24           221. Pursuant to the coverage provided in the Plan, to ERISA 29 U.S.C. §  
25 1132(a)(1)(B), and to applicable federal law, Ms. Burton is entitled to recover all  
26 benefits due under the terms of the Plan, and to enforce her rights under the  
27 Plan.  
28



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222. Ms. Burton is entitled to reinstatement of any other employee benefits that were terminated, discontinued, or suspended because of the termination of her disability benefits. She is entitled to a restoration of the *status quo ante* before LTD benefits were wrongfully terminated.

223. Pursuant to 29 U.S.C. § 1132(g), Ms. Burton is entitled to recover her attorneys' fees and costs incurred herein.

224. Ms. Burton is entitled to prejudgment interest on the benefits to which she is entitled and on her damages at the highest legal rate until paid.

**WHEREFORE**, on all claims, Ms. Burton asks for entry of judgment against Defendants as follows:

- A. All past and future LTD benefits under the terms of the Plan;
- B. Clarifying and determining Ms. Burton's rights to future benefits under the terms of the Plan;
- C. For any other benefits Ms. Burton may be entitled to receive under the Plan due to her disability;
- D. An award of Ms. Burton's attorneys' fees and costs incurred herein;
- E. An award of prejudgment interest on benefits and damages at the highest legal rate until paid; and
- F. For such and further relief as the Court deems just, equitable, and reasonable.

Dated this 8th day of October, 2021.

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